

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
ABERDEEN DIVISION**

BARBARA L. KELLY

PLAINTIFF

V.

CIVIL ACTION NO. 1:14-CV-00208-SA-SAA

ATRIUM MEDICAL CORPORATION

DEFENDANT

**ORDER**

Presently before the Court is Plaintiff's Motion to Voluntarily Dismiss without Prejudice [20] filed pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i). Rule 41(a)(1)(A)(i) provides that a plaintiff may only "dismiss an action without a court order by filing . . . a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." Here, Defendant filed its Answer [8] on December 31, 2014, and therefore Plaintiff cannot unilaterally dismiss her claims at this point in the litigation absent "a stipulation of dismissal signed by all parties who have appeared." FED. R. CIV. P. 41(a)(1)(A)(ii).

Still, Defendant has filed a response [21] indicating that it does not oppose the motion, and the Court is authorized under Federal Rule of Civil Procedure 41(a)(2) to dismiss an action at the Plaintiff's request "on terms that the court considers proper." Whereas Plaintiff requests a dismissal without prejudice and Defendant does not object, the Court finds Plaintiff's motion to be well taken and the same is hereby GRANTED. Plaintiff's claims are dismissed without prejudice with each party to bear its own fees and costs.

SO ORDERED on this, the 13th day of March, 2015.

/s/ Sharion Aycock  
UNITED STATES DISTRICT JUDGE